

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

) Docket No. CWA-07-2011-0107

THE CITY OF MARENGO, IOWA,)

) FINDINGS OF VIOLATION and
) ORDER FOR COMPLIANCE

Respondent,)

Proceedings under Sections 308(a) and)
309(a)(3) of the Clean Water Act,)
33 U.S.C. §§ 1318(a) and 1319(a)(3))

Preliminary Statement

1. The following FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”), by Sections 308(a) and 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318(a) and 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Respondent, the City of Marengo (hereafter “Respondent” or “the City”), operates a Publicly Owned Treatment Works (“POTW”) in the State of Iowa that treats domestic wastewater.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

4. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

6. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

7. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

Findings of Fact

8. The City is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. The City owns and operates a POTW that receives and treats wastewater from various domestic sources and one industrial source.

10. The City’s POTW discharges to the Iowa River, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

11. The City’s POTW is a “point source” that “discharges pollutants” into “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

12. The City’s discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

13. IDNR granted NPDES Permit No. IA-0047937 to the City for discharges from its POTW to the Iowa River. The permit (hereafter “2000 NPDES permit”) became effective March 31, 2000, and expired March 30, 2005. The 2000 NPDES permit has been administratively extended by IDNR.

14. The City's wastewater treatment facility, which discharges through Outfall 001, has a design flow of 0.242 million gallons per day ("MGD") and experienced an average daily flow of approximately 0.67 MGD from 2009 through 2010.

15. On December 13 through 16, 2010, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of the City's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City's compliance with its NPDES permit and the CWA.

16. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the 2000 NPDES permit, and observed the wastewater treatment facility.

17. On August 25, 2011 and September 1, 2011, EPA received responses from the City to a request for information (hereafter "EPA Information Request") issued by EPA to the City on August 12, 2011, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

Findings of Violation

18. The facts stated in Paragraphs 8 through 17, above, are herein incorporated.

Failure to Comply with Effluent Limitations

19. The Effluent Limitations section of the City's 2000 NPDES permit prohibits the City from discharging pollutants except in compliance with the effluent limitations established by the permit. The 2000 NPDES permit established limitations for Outfall 001, discharge from the wastewater treatment facility, including the following:

- a. effluent flow – a 30-day average limitation of 0.549 MGD and a daily maximum limitation of 1.765 MGD;
- b. ammonia nitrogen – a 30-day average concentration limitation of, depending on the month, either 12 milligrams per Liter ("mg/L") or 14 mg/L; a daily maximum concentration limitation of 19 mg/L; a 30-day average mass limitation of, depending on the month, either 37 pounds per day ("ppd") or 38 ppd; and a daily maximum mass limitation of, depending on the month, either 50 ppd or 51 ppd;
- c. 5-day carbonaceous biochemical oxygen demand ("cBOD₅") – a 7-day average concentration limitation of 40 mg/L; a 30-day average concentration limitation of 25 mg/L; a 7-day average mass limitation of 183 ppd; a 30-day average mass limitation of 115 ppd; and compliance with a removal efficiency of 85%; and

- d. total suspended solids (“TSS”) – a 7-day average concentration limitation of 120 mg/L; a 30-day average concentration limitation of 80 mg/L; a 7-day average mass limitation of 549 ppd; a 30-day average mass limitation of 366 ppd; and compliance with a removal efficiency of 85%.

20. The EPA inspection referenced in Paragraph 15, above, and a review of information provided by the City in response to EPA’s Information Request, revealed that the City has exceeded the 2000 NPDES permit effluent flow limitations, mass limitations for ammonia nitrogen, mass limitations for cBOD₅, and concentration and mass limitations for TSS, and has failed to meet the removal efficiencies for cBOD₅ and TSS, including the following:

a. effluent flow

- i. the City exceeded the 2000 NPDES permit’s daily maximum limitation for flow during the months of April, May, June, July, and September 2008; July, October, November, and December 2009; March, May, June, and July 2010;
- ii. the City exceeded the 2000 NPDES permit’s 30-day average limitation for flow during the months of March, April, May, June, July, and September 2008; March, June, July, August, September, October, November, and December 2009; January, February, March, April, May, June, July, and August 2010; April, May, and June 2011;

b. ammonia nitrogen

- i. the City exceeded the 2000 NPDES permit’s daily maximum mass limitations for ammonia nitrogen during the months of April and June 2008; March and April 2009; March 2010; and April 2011;
- ii. the City exceeded the 2000 NPDES permit’s 30-day average mass limitations for ammonia nitrogen during the months of March and December 2010, and March and April 2011;

c. cBOD₅

- i. the City exceeded the 2000 NPDES permit’s 7-day average mass limitation for cBOD₅ during the months of May 2008, September 2009, and April, May, June and July 2010;
- ii. the City exceeded the 2000 NPDES permit’s 30-day average mass limitation for cBOD₅ during the months of September 2009; April, May, June and July 2010;

- iii. the City did not meet the 2000 NPDES permit's requirement for the removal efficiency of cBOD₅ during the months of March, April, June, July, November and December 2008; January, February, March, April, May, June, July, August, September, October, November, and December 2009; February, April, June, July, August, September, and December 2010; January, February, March, April, May, and June 2011;
- d. TSS
 - i. the City exceeded the 2000 NPDES permit's 7-day average mass limitation for TSS during the months of January 2008; September 2009; and July 2010;
 - ii. the City exceeded the 2000 NPDES permit's 30-day average mass limitation for TSS during the months of January 2008, September and November 2009, and July 2010;
 - iii. the City exceeded the 2000 NPDES permit's 7-day average concentration limitation for TSS during the month of January 2008;
 - iv. the City exceeded the 2000 NPDES permit's 30-day average concentration limitation for TSS during the months of January 2008 and June 2009;
 - v. the City did not meet the 2000 NPDES permit's requirement for the removal efficiency of TSS during the months of January, March, April, June, July, August, September, October, and December 2008; January, February, March, April, May, June, July, August, September, October, November, and December 2009; January, February, April, June, July, August, September, October, November, and December 2010; and January, February, March, April, May, and June 2011.

21. The City's failure to comply with the effluent limitations is a violation of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Failure to Comply with Monitoring Requirements

22. The Monitoring and Reporting Requirements section of the City's 2000 NPDES permit requires the City to monitor various wastewater parameters at certain frequencies and report this data to IDNR. Paragraph (a) of this section requires that the samples and measurements taken shall be representative of the volume and nature of the monitored wastewater.

23. The EPA inspection referenced in Paragraph 15, above, revealed that the City failed to take measurements that were representative of the volume of the wastewater. Specifically, the City has and continues to estimate influent flow volume based on reading influent pumping times and multiplying by the pump's estimated capacity. At least until October 2009, these estimates were based on an inaccurate pumping rate and did not account for inflow from a small lift station in the southwest corner of the lagoon, which was assumed to pump to the main lift station but was in fact pumping directly into the lagoon.

24. The Monitoring and Reporting Requirements section of the City's 2000 NPDES permit requires the City to use 24-hour composite samples to monitor cBOD₅, TSS, and ammonia nitrogen.

25. The EPA inspection referenced in Paragraph 15, above, revealed that the City did not use composite samples. Instead, the City collected grab samples of influent during cold weather, and always collected grab samples of effluent, which was used to monitor cBOD₅, TSS, and ammonia nitrogen.

26. Paragraph (b) of the Monitoring and Reporting Requirements section of the City's 2000 NPDES permit requires the City to utilize analytical and sampling methods as specified in 40 C.F.R. Part 136 or other methods that have been approved in writing by IDNR. 40 C.F.R. § 136.3, titled "Identification of test procedures," specifies the required containers, preservation techniques, and holding times in Table II, which states that cBOD₅, TSS, ammonia nitrogen must be preserved at less than 6° Celsius.

27. The EPA inspection referenced in Paragraph 15, above, revealed that the City failed to preserve samples of influent at less than 6° Celsius.

28. The City's failure to comply with these monitoring requirements is a violation of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Failure to Comply with Reporting Requirements

29. Paragraph (d) and (e) of the Monitoring and Reporting Requirements section of the City's 2000 NPDES permit require the City to report all data needed to determine compliance with the limitations contained in the permit on a monthly basis.

30. The EPA inspection referenced in Paragraph 15, above, and a review of information provided by the City in response to EPA's Information Request, revealed that the City failed to report sampling results for the concentration and mass of ammonia nitrogen discharged during the month of November 2008 and the concentration and mass of TSS discharged during the month of May 2010.

31. The City's failure to comply with the reporting requirement is a violation of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Order for Compliance

Based on the FINDINGS OF FACT and FINDINGS OF VIOLATION set forth above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described below:

32. Within 30 days of the effective date of the Order, the City shall identify and implement all necessary actions to correct the deficiencies cited above, and to comply with the conditions and limitations of its 2000 NPDES permit.

33. *Monitoring and Reporting.* Within 30 days of the effective date of the Order, the City shall submit the following information to EPA, with a copy to IDNR:

- a. copies of laboratory results supporting the zero concentrations of ammonia reported in Monthly Operation Reports for the months of September 2008, June 2009, September 2009, May 2010, June 2010, August 2010, and June 2011; and
- b. the City's current monitoring and reporting procedures; or, if it has none, the City shall develop procedures to ensure that all monitoring and reporting required by its NPDES permit is conducted according to permit requirements and is included in the Monthly Operating Reports submitted to IDNR, and shall submit the newly developed procedures.

34. *Compliance Plan and Schedule.* The City shall develop a plan describing corrective measures for achieving compliance with the City's permitted effluent limitations (the "Compliance Plan"). EPA will review and may provide comments on the City's Compliance Plan. The City shall begin implementation of the corrective measures in accordance with the schedule it submits; all corrective measures shall be completed as soon as practicable, but no later than September 30, 2016, unless EPA approves a written request for extension. The Compliance Plan shall be submitted to EPA, with a copy to IDNR, in the following manner:

- a. Within 60 days of the effective date of the Order, the City shall submit a definitive schedule, including interim milestones, describing the actions required to investigate sources of infiltration and inflow ("I/I") and the dates the actions will be completed.
- b. Within 180 days of the submittal date of the schedule required by Paragraph 34(a) of the Order, the City shall submit one of the following:

- i. A definitive schedule, including interim milestones, describing all actions required to eliminate sources of I/I identified in the schedule described in Paragraph 34(a) of the Order, and the dates the actions will be completed; or
 - ii. A definitive schedule, including interim milestones, describing all actions required to upgrade the treatment facility to accept and treat the maximum flow expected, including I/I, in compliance with the limits stated in the City's NPDES permit, and the dates the actions will be completed.
- c. Immediately upon commencing implementation of the schedule required by Paragraph 34(b), the City shall submit a written certification stating the date implementation of the schedule commenced.

Submissions

35. *Reporting to EPA and IDNR:* The City shall submit to EPA, with a copy to IDNR, quarterly reports describing the actions the City has taken each quarter to comply with the terms of this Order. These reports are due every January 28, April 28, July 28, and October 28 until termination of this Order pursuant to Paragraph 45 below; the first report is due October 28, 2011. These reports shall include, at a minimum:

- a. Compliance Plan updates. Each quarterly report shall provide a detailed update regarding the City's implementation of its Compliance Plan, including a description of work completed and milestones met during the previous quarter; and
- b. Monthly Operating Reports. Each quarterly report submitted to EPA shall include a copy of that quarter's Monthly Operating Reports, signed and certified as required by the regulations at 40 C.F.R. § 122.22 and by Paragraph 22 of the Standard Conditions section of the City's 2000 NPDES permit. The copy of the quarterly report submitted to IDNR does not require a copy of any Monthly Operating Reports previously submitted to IDNR.

36. All submissions by the City to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official:

I certify that the City of Marengo has complied with all the applicable requirements of the Order for Compliance. I also certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly

responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

37. Two copies of all documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Wayne Dillard, P.E.
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

38. A copy of all documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

Dennis Ostwinkle
Iowa Department of Natural Resources, Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623.

General Provisions

Effect of Compliance with the Terms of this Order

39. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

40. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

41. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

42. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

43. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

44. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 11th day of September, 2011.



Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7



Erin Weckley
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Docket Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

The Honorable Joe Seye
Mayor, City of Marengo
153 East Main Street
Marengo, Iowa 52301-1510,

and by first class mail to:

Dennis Ostwinkle
Iowa Department of Natural Resources, Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623.

SEP 19 2011

Date

